

## **REMARKS**

### **I. Introduction**

Claims 34 to 52 are pending in the present application. In view of the following remarks, Applicants respectfully submit that the claims are now in condition for allowance.

### **II. Rejection of Claims 34 to 39 and 41 to 50 Under 35 U.S.C. § 103(a)**

Claims 34 to 39 and 41 to 50 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 5,718,682 ("Tucker") and U.S. Patent No. 5,232,453 ("Plass et al."). It is respectfully submitted that the combination of Tucker and Plass et al. does not render unpatentable these claims for at least the following reasons.

Claim 34 recites that a port for a catheter includes a chamber for receiving active substances, the chamber being arranged in a housing and closed off by a piercable membrane, and a connecting piece, the connecting piece being capable of connecting to the catheter and in fluid connection with the chamber. Claim 34 also recites that the port includes clamping jaws, the clamping jaws having clamping faces that are situated opposite one another, the clamping jaws being movable from a first position, in which the clamping jaws are spaced away from the housing laterally, to a second position in which the clamping jaws fix the catheter in place between their clamping faces by a clamping action. Claim 34 also recites that the clamping jaws are connected to the housing when the clamping jaws are in each of the first position and the second position.

The features of claim 1 allow, e.g., a simplified handling of the port, as the clamping jaws merely need to be moved from the first clamping position to the second clamping position in order to fix the catheter.

Tucker discloses, referring to Figure 4, an implantable access port device comprising a housing 42, a septum 44, and a cup unit 46. The septum 44 and the cup unit 46 are inserted into the housing 42. The cup unit 46 comprises a cup-shaped element 54 and cup ring halves 56a and 56b. The cup ring halves are separate members that are brought together with the housing 22. These components are mechanically compressed together while the bottom of the cup

element is subjected to vibration at ultrasonic frequencies, thereby melting and permanently welding the components together. See col. 4, lines 29 to 40.

Plass et al. describes a catheter holder including a pad 32 and a film 34 overlapping one surface of the pad 32. A pair of tape or strip members 38A, 38B is attached to the film 34. In use, the two tapes 38A and 38B can be folded upwardly to encase the catheter 36. See col. 3, line 38 to col. 4, line 12.

The Examiner contends at page 3 of the Office Action that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Tucker to attach the clamps at a pivot point to cup 54 as taught by Plass as it is a known method of using opposing clamping arms (in both Plass and Tucker) to hold a medical device.” Applicants respectfully disagree.

It is initially noted that Plass et al. discloses a catheter holder comprising two tapes for fixing the catheter by an adhesive coating rather than two clamping jaws to fix the catheter in place between their clamping faces by a clamping action. Thus, even if it is assumed that the cup ring halves 56a and 56b constitute clamping jaws (which Applicants do not concede), there is no apparent motivation for one of ordinary skill in the art to combine Plass et al. with Tucker in the manner suggested in the Office Action, since tapes for fixing the catheter and clamping jaws for clamping a catheter are not comparable structures.

Further, referring to Figures 3 to 6 of Tucker, cup ring halves 56a and 56b are encircled by the plastic housing 42 (see Figure 3), and after the application of the ultrasonic frequencies are permanently welded to the housing. According to Tucker:

The cup ring halves 56a, 56b are brought together around the cup shaped element 54 and the thus formed cup unit 46 is then inserted into the lower opening in the housing 44. The components are mechanically compressed together while the bottom of the cup element 54 is subjected to vibration at ultrasonic frequencies. The resulting heat generated between the plastic cup ring halves 56a, 56b and the plastic housing 42 causes each of the plastic materials to melt at their interfaces which permanently welds the three plastic components together.

Col. 4, lines 31 to 40 (emphasis added). In this regard, it is entirely unclear why one of ordinary skill in the art would modify the cup ring halves 56a and 56b to be pivotably attached to the cup 54, since the cup ring halves 56a and 56b are constrained within and welded to the housing, thereby preventing any pivoting. In this regard, the modification proposed in the Office Action would require a substantial redesign of the device of Tucker that would preclude a prima facie case of obviousness. See In re Ratti, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959)

In view of the foregoing, it is plainly apparent that there is no reason or rationale as required by KSR International Co. v. Teleflex Inc., 550 U.S. 398, 82 U.S.P.Q.2d 1385 (2007) to support an obviousness rejection under 35 U.S.C. § 103(a). Accordingly, withdrawal of this rejection is respectfully requested.

### **III. Rejection of Claim 40 Under 35 U.S.C. § 103(a)**

Claim 40 was rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Tucker, Plass et al., and U.S. Patent No. 6,165,157 (“Dillon et al.”). It is respectfully submitted that the combination of Tucker, Plass et al., and Dillon et al. does not render claim 40 unpatentable for at least the following reasons.

Claim 40 depends from claim 34 and therefore includes all of the features of claim 34. As more fully set forth above, the combination of Tucker and Plass et al. does not render unpatentable claim 34. Dillon et al. does not cure the defects of the combination of Tucker and Plass et al. set forth above. As such, it is respectfully submitted that the combination of Tucker, Plass et al., and Dillon et al. does not render unpatentable claim 40. Accordingly, withdrawal of this rejection is respectfully requested.

### **IV. Rejection of Claims 51 and 52 Under 35 U.S.C. § 103(a)**

Claims 51 and 52 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Tucker, Plass et al., and U.S. Patent No. 5,167,638 (“Felix et al.”). It is respectfully submitted that the combination of Tucker, Plass et al., and Felix et al. does not render unpatentable these claims for at least the following reasons.

Claims 51 and 52 ultimately depend from claim 34 and therefore include all of the features of claim 34. As more fully set forth above, the combination

of Tucker and Plass et al. does not render unpatentable claim 34. Felix et al. does not cure the defects of the combination of Tucker and Plass et al. set forth above. As such, it is respectfully submitted that the combination of Tucker, Plass et al., and Felix et al. does not render unpatentable claims 51 and 52. Accordingly, withdrawal of this rejection is respectfully requested.

**V. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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